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Critique of Nigerian Land Use Act of 1978

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Abstract:

This paper critically examines the Nigerian Land Use Act of 1978 and its impact on economic development. The paper also examines the inherent problems of Land Use act as well as importance of the act since its inception. The economy of a country also depends on land for its survivor. To make land in Nigeria available to all and to ensure that land is acquired and put to a proper use for the needed development, governments during and after colonial period enacted the Land Use Act to govern the use or administration of land in Nigeria. Land policy affects the economy of a nation either positively or negatively depending on how effectively the policy is implemented. The Land Use Act was enacted in 1978 with the aim of improving economic development by ensuring effective and equitable utilization of land and land resources in the country. However, achieving this objective has been hampered by two major obstacles. The first is the inherent contradictions and defects in the law, and the second is institutional weakness and lack of political will to implement the Act fairly and equitably. However, the Land Use Act of 1978 (LUA) has failed to achieve some of its objectives. The failure is ascribed to problems inherent in the Act and poor implementation. To secure economic development and easy access to land by both government and the citizens, the study recommend the amendment of certain provisions of the Act as well as government to implement the amended version of the Act in a fair and equitable way.

Keywords: Critique, Land Use Act, 1978, Nigeria.

1.0. INTRODUCTION

Land is one of the most controversial assets of nature, a resource of primary importance upon which the whole economy of any nation hinges; hence any policy on land affects the economy of the nation positively or negatively depending on whether a right or wrong policy is initiated. Land is said to be fragile and scarce. This implies that it is not enough and difficult to acquire and also human activities can damage or destroy the land resources. It is short in supply and needed to be effectively utilized in order to satisfy the aspiration of those who acquired it. Land is the basic necessity of life which provides food, shelter, and Livelihood to man (Oxford Advanced Learner's Dictionary 2006; and Omeje, 2008).The economic, social and environmental future of our country depends on the wise use of land. It is construed that no development can be effective without land. Thus, land without dimension of tenure is meaningless concept. For available land to be equitably managed among the people and promote maximal use of it by prospective resource owners, there is need for a worthy land policy to be in place for effective control and management of land in order to witness the desired development in Nigeria. Prior to 29th March, 1978 when the Land Use Act was enacted, there were land laws which governed land tenure systems in Nigeria. These laws were in use in the country and were later found to be substandard because despite their existence, the problems of land tenure continued in Nigeria. One major problem was the difficulty in obtaining land by the government in major urban centers for national development because of land speculations, racketeering and high cost of compensation usually demanded by the land owners whenever government acquired land to execute its projects (Public land decree, 1976). Against this background, the Federal Government in a deliberate effort to unify land tenure, streamline and simplify ownership of land in

Nigeria, set up the Land Use Panel in 1977 with certain terms of reference (Ojigi, 2012). The references were considered and adopted by the government which promulgated the Land Use Act, 1978. Land use Act is usually concerned with the legislation that provides the right to use of land in both urban and rural areas of Nigeria. The right includes the rights of occupation and development, alienation and many privileges associated with land. Virtually, every nation of the world relies on land, all human activities are carried out on land which is the basic factor of production. The need to acquire land by man has tremendously increased over the years. Prior to the promulgation of land use Act, Land is completely owned by individuals, families and communities with the head who hold the land in trust for the use of the entire people. But the advancement of land use Act of 1978 altered the existing land tenure and vested all lands in the government. Having observed all these in recent years, it is clearly understood that these goals has not in any way comes to reality rather the Act has been used to achieve personal goals and objectives by various past administrators and government of various levels. Another issue is that major objectives and purposes of the land use Act of 1978 has been seriously deviated from, the aim of the land use Act was to solve the diversified land policies in Nigeria and ensuring an easy accessibility of all Nigeria to land but in today's concept, land has been shared among highest bidders and buyers (Okafor and Nwike 2016). Damilola (2020) stated that the Land Use Act in Nigeria is one of the important laws that need to be understand either as a land-owner or land-owner to be. Activities of land grabbers, scam agents and the number of professionals required are some of the biggest challenges in legitimately and successfully acquiring a land in Nigeria. The Nigerian Land Use Act 1978 is the principal legislation that regulates contemporary land tenure in Nigeria. Upon its enactment, the law brought about radical, if not revolutionary, changes in the erstwhile land

tenure systems in the country (Land Use Act, 1978). The law was aimed, among other things, at reducing unequal access to land and land resources, a situation that had caused a great deal of hardship to the citizenry. Massive and unfettered access to land and land resources by the citizens could stimulate the needed economic growth in an economy that depends heavily on agriculture and mineral resources. The Land Use Act was equally targeted at reducing the high cost of land required for industrial estates and mechanized agriculture. For these reasons, the law appeared to nationalize land when it placed it in the hands of the government as a custodian, to hold in trust and administer for the use and common benefit of all Nigerians. However, after more than three decades of the operation of the law, it is apparent that most of the problems it sought to cure have resurfaced and certain provisions of the law have themselves worked hardship on the citizens and tended to impede economic development, which the Act initially sought to stimulate (Nwocha, 2016). This paper examines Land Use Act and its impact on economic development in the country.

2.0. LITERATURE REVIEW

2.1 Land Use Act of 1978

The Land use act (formerly called the Land Use Decree) was promulgated on 29th of March 1978. According to Chapter 202 of the Laws of the Federation of Nigeria 1990, the Land Use Act is "An Act to Vest all Land comprised in the territory of each State (except land vested in the Federal government or its agencies) solely in the Governor of the State, who would hold such Land in trust for the people and would henceforth be responsible for allocation of land in all urban areas to individuals resident in the State and to organisations for residential, agriculture, commercial and other purposes while similar powers with respect to non-urban areas are conferred on Local Governments (27th March 1978) Commencement." Prior to the enactment of the Land Use Act in 1978, there were three main sources of land law: Customary Law (varied from custom to custom), English received law (which comprises of the common law, doctrine of equity and statutes of general application), and local legislation (Oseni, 2011). The Parliament of the then northern Nigeria passed the Land Tenure Law in 1962, which governed all interest affecting land. In the then Southern Nigeria, however, customary system of land tenure governed land interest and land was owned by communities, families and individuals in freehold (Bolaji, 2011). Land was acquired either by inheritance, first settlement, conveyance, gift, outright purchase or long possession, as such, causing conflicts and violence in terms of ownership. The Land Use Decree was promulgated on 29 March, 1978 following the recommendations of a minority report of a panel appointed by the Federal Military Government to advice on future land policy (Adegboye, 1987). The land use act distinguishes throughout between urban and non-urban (hereafter 'rural') land. In urban areas (to be so designated by the Governor of a state), land was to come under the control and management of the Governor, while in rural areas it was to fall under the appropriate local government (Udo, 1985). Famoriyo (1972) stated that the Decree envisaged that 'rights of occupancy', which would appear to replace all previous forms of title, would form the basis upon which land was to be held. These rights were of two kinds: statutory and customary (Udo, 1985). Statutory rights of

occupancy were to be granted by the Governor and related principally to urban areas. In contrast, a customary right of occupancy, according to the Decree, 'means the right of a person or community lawfully using or occupying land in accordance with customary law and includes a customary right of occupancy granted by Local Government under this Decree.' Local governments were empowered to grant customary rights of occupancy to any person or organization (for mining, oil and gas), residential and other purposes with the provision that grants land for agricultural or grazing purposes should not exceed 500 or 5000 hectares respectively without the consent of the State Governor (Omotola, 1985). With the minor exception of land subject to Federal or State claims, the Decree also empowered the local government to 'enter upon, use and occupy for public purposes any land within the area of its jurisdiction' and to revoke any customary right of occupancy on any such land (Adegboye, 1987). Under the Land Use Act 1978, all land in Nigeria is vested in the government. Nigeria operates two systems of land tenure. They are; customary and non-customary (statutory) system of land tenure. Customary land tenure system is a system of landholding indigenous to the people, and Local governments may grant customary rights of occupancy to land in any non-urban area to any person or organization for agricultural, residential, and other purposes, including mining, oil and gas extraction (Land Use Act, 1978). In the statutory tenure system, individuals and entities can obtain a statutory right of occupancy for urban and non-urban land (Land Use Act, 1978). Statutory occupancy rights are granted for a definite term, which is set forth in the certificate. The Land Use Act, promulgated in 1978, was motivated by the need to make land accessible to all Nigerians; prevent speculative purchases of communal land; streamline and simplify the management and ownership of land; make land available to governments at all levels for development; and provide a system of government administration of rights that would improve tenure security (Ukajiofo, 2008). To achieve the foregoing objectives of the Act, various provisions are made in the law to fast-track a seamless administration and implementation of the policy of the Act. However, after 40 years of implementing and administering the Act, one could say that the Act has failed to achieve its set objectives. It is well-known, for instance, that the Act divests citizens' freehold title to their land. And, of course this is antithetical to their economic prosperity as land ceased from being an article of commerce upon the commencement of the Act (Nwocha, 2016). Administratively, the Act created a monstrous fiefdom in the governor of the state and confounded the roles of the local government and state in land administration in Nigeria.

2.2 Objectives of the Land Use Act

Nwocha, (2016) stated that the Land Use Act aims principally at the effective and sustainable management and control of land in Nigeria particularly in a manner that gives government sufficient powers over the acquisition, transfer or otherwise assignment of land and land resources. There are a number of objectives, which the Act sought to accomplish, and these may be encapsulated for the sake of clarity. First, the Act was intended to curb land speculation, which accounted for the astronomical rise in land values especially in urban areas. It was believed then that once ownership of land was vested in the government, speculators would be forced out of business and government would then be able to stabilize the value of land. Second, the Act

was intended to assist the citizenry irrespective of their social status to realize their ambitions or aspirations of owning the place where they and their families would live a secure and peaceful life. Third, investing ownership of land in government sought to remove the difficulty which government encountered in acquiring land for public purposes. Fourth, the Act intended to harmonize the tenure systems throughout the country especially in the southern part of the country which lacked a coordinated and formalized tenure arrangement as was the case in the North under the Land Tenure Law 1962 (Land Tenure Law, 1962). In most parts of the South, the situation gave rise to multiple and endless litigations, which hampered economic development especially as it concerned the location of industries, the siting of infrastructural projects such as hospitals, schools, and the operation of mechanized agriculture. These problems, among others, were expected to be eliminated or at least drastically reduced by the enactment of the Land Use Act. Ega (1985) stated that the primary objective of the Act is to facilitate rapid economic and social change in the country through efficient land use. The immediate aims include prevention of land concentration in both the rural and urban sectors of our economy, control of land transactions, land prices and land speculation, and the facilitation of access to land for the state as well as private individuals and thereby remove a cause of socio-economic inequality. The Land Use Act was enacted to satisfy the need for larger areas of land for agriculture and non-agricultural purposes; end racketeering and the unending litigations in land transactions due to rising demand for land; checkmate traditional land ownership that had constituted barrier to national development programmes; prevent a situation where on the death of a land occupier, inheritance problems arose in the form of excessive subdivision of holdings; cater for the need for sustained security of rights to land in matters of duration, compensation and alienation of rights in land and sharpen governments sensitivity to a system in which only the rich, powerful and influential own land (Anyanwu, Oyefusi and Oaikhenan, 1997).

The Land Use Act itself gave an umbrella objective that it desires to achieve when it stated in its preamble that:

- i. Whereas it is in the public interest that the rights of all Nigerians to the land of Nigeria be asserted and preserved;
- ii. And whereas it is also in the public interest that the rights of all Nigerians to use and enjoy land in Nigeria and the natural fruits thereof in sufficient quantity to enable them to provide for the sustenance of themselves and their families should be assured, protected and preserved;
- iii. Now therefore, the federal military government hereby decrees as follows.

2.3 Achieving the Objectives of the Act

The central objective of the Act, is to invest ownership of land in the government which then shall apply it equitably for the benefit of all Nigerians and for the country's economic and social development. The principle of State ownership under the Act is asserted in section 1, which provides as follows: Subject to the provisions of this Act, all land comprised in the territory of each State in the Federation are hereby vested in the Government of that State and such land shall be held in trust and administered for the use and common benefit of all Nigerians in accordance with the provisions of this Act. This section is the

most important provision in the Act as it vests the radical title in all land in the territory of a State in the Governor of that State. In effect, the ultimate ownership rights, which hitherto rested on individuals, families or communities, especially in southern Nigeria, shifted to the Governor as trustee for the benefit of all Nigerians. However, upon the commencement of the Act, certain parcels of land within the territory of a State were excluded from the authority and control of the Governor by the operation of section 49(1) of the Act. These were parcels of land owned or controlled by the federal government or any agency of the federal government. Having vested title, control and management of land in the state on the Governor, the Act specified that the interest or title, which an individual citizen can have over land, is a right of occupancy. This power of the Governor is consolidated by a community reading of sections 5(1) and (2), 22 and 28 of the Act. Section 5(1) gives the Governor legal authority to grant statutory rights of occupancy to any person for all purposes. Section 22 makes it unlawful for any holder of a statutory right of occupancy granted by the Governor to alienate such right or any part thereof by assignment, mortgage, transfer of possession, sub-lease or otherwise howsoever without the consent of the Governor first had and obtained. Section 28(1) on the other hand, empowers the Governor to revoke a right of occupancy for overriding public interest while section 5(2) extinguishes all hitherto existing rights to the use and occupation of land, which is the subject of statutory right of occupancy (Land Use Act, 1978). If the object of attaining economic development and prosperity in Nigeria were to be attained by placing the control and management of land in the hands of the government, the Land Use Act could well have been a great success but as the subsequent analysis reveals, this unfortunately, is not the case.

2.4 Problems of Land Use Act

One of the central objectives of the Land Use Act is to make land readily available at an affordable rate to all Nigerians. The stated objectives of the Land Use Act have not been achieved because of the problems inherent in the Land Use Act and the problem of implementation. The problems inherent in the Land Use Act are the lack of implementation guidelines, the entrenchment of the LUA in the Constitution, the inalienability of land in rural areas, the vesting of all land for the use and collective benefit of Nigerians only, inadequate compensation provisions, compensation outside the jurisdiction of courts, clarity regarding rights to land for grazing purposes, and the age of the Act. The problem of implementation lies in the abuse of power by the governor, the inefficient public service and too much bureaucracy, and a lack of political will. Institutional weakness is seen as the cause of the astronomical rise in land value and the increase in land speculation in Nigeria.

2.5 Importance of the Land Use Act

As a result of importance and usefulness of land to man as well as the development of his society, every person generally desires to acquire and own a portion of land to achieve the various ends for which the land is meant. Damilola(2020) opined that Land Use Act bothers majorly on ownership rights. If a land is acquired by a person without a Certificate of Occupancy, the land is not his, what the person has is a lease. He never have a freehold because the government can seize his land or property without any form of compensation. The power to do this rests

within the Land Use Act, which reads: “All the rights formerly vested in the holder in respect of the excess of the land shall in the commencement of this Act be extinguished and the excess of the land shall be taken over by the Governor and administered as provided in this Act.” Under the Land Use Act, the governor is responsible for allocation of land in all urban areas to individuals’ resident in the state or to organizations for residential, agricultural, commercial and other purposes while similar powers with respect to non-urban areas are conferred on the Local Government. The act altered the existing land laws in the Southern part of the country by removing corporate groups, families and chiefs from the trusteeship of land and replaced them with the state governors. This poses as both an advantage and disadvantage of the Land Use Act.

2.6 Controversies over the Land Use Act in Nigeria

One of the most contentious legislation in Nigeria remains the Land Use Act. Many of the stakeholders in the real estate industry have described it as monster crippling the housing development in the country. Experts have opined that the Act is overdue for a comprehensive review. They have also repeatedly called for the Act to be removed from the Constitution to make its amendment more realistic and less cumbersome. Arguing that there will be no meaningful growth in the real estate sector if land continues to be under the firm grips of the State governors. Constitutional requirements are the main reason for the failures experienced in amending the Land Use Act as moves to amend proved abortive. Past Presidents Umaru Musa Yar’ Adua and Good luck Jonathan during their administrations attempted to amend the Act but their efforts did not yield expected results as a direct result of inherent bottlenecks involved in amending the Constitution. Experts have asserted that land has become so expensive because unlike in the past, you could buy a piece of land from either the community, an individual or from even a company and you go and register that title at the Land Registry. Once it is registered, it becomes a bankable document. Today, however, the process has changed. Now, you go and pay the usual fee and you take the document given to you and the survey plan to the government who will then issue you a Certificate of Occupancy also known as the C of O (Damilola, 2020).

2.7 Advantages and Disadvantages of the Land Use Act

This study seeks to shine the light on the pros and cons of the land use act in Nigeria while highlighting possible solutions to the challenges. The Land use Act promulgated in 1978 and made an integral part of the constitution of the Federal Republic of Nigeria was aimed at promoting the proper and efficient use of land.

Advantages of the Land Use Act

To a large extent, the land use act achieved its aims and objectives:

- i. Ensuring that any person that requires land for any purpose with the ability to make optimum use of it will obtain it.
- ii. Making it illegal for indigenes to allocate land without prior government’s approval as only the Governor of each state has the power to allocate urban lands, and the local area councils have the power to allocate rural lands.
- iii. Preventing the practice of land speculators buying up large acres of land, especially in developed urban locations with no

intent of immediate or future use, but to tie it down in order to obtain high prices for a future sale to another person.

iv. Reduction in boundary disputes, the number, and frequency of court cases of land ownership since the survey of acquired land is mandatory for occupancy right to be granted.

v. Allowing for easy acquisition of land for agricultural use as it provides farmers with not more than 500 hectares of land for crop production or 5000 hectares of land for grazing.

Disadvantages of the Land Use Act

The Land Use Act, however, is not without pitfalls as there a number of challenges associated with the act and many have argued for the need to have a Land Adjudication Act (LAA) to address these issues. The adoption of systematic titling and registration will help combat the challenge of value gap between a land with a registered title and one without it. For example, an individual with a registered title to his plot of land is potentially wealthier and better positioned to take advantage of opportunities than another individual with land in abundance but without a registered title.

i. Abuse of Office: Another fault of the Land Use Act was in the transfer of title and ownership of land from individuals and communities to the Governors who hold the land in trust but many of whom have been known to have abused the power and privileges conferred on them by the Act. Section 22 requires the acquisition of Governor’s consent before a statutory right of occupancy can be alienated as this is necessary where there is a transfer of title from a vendor to a purchaser.

ii. Delay in land acquisition: Acquisition of land by individuals and corporate bodies for commercial and economic development purposes have been extremely difficult as a result of the Land Use Act. The government’s approval amongst other reasons from the Land Use Act results in the delay in making land accessible to an average Nigerian.

For any law or Act to have a full effect on the populace it must be free from loopholes and easy to adhere to by the common man. That being established, it is highly imperative for the government and lawmakers alike to critically look into the Land Use Act and address all possible faults pointed out by major stakeholders within the real estate industry (Damilola, 2020).

3.0.IMPACT OF THE ACT ON ECONOMIC DEVELOPMENT IN NIGERIA

Nwocha, (2016) stated that in terms of attaining its set objectives, the Land Use Act has not been a success and two principal reasons account for this. The first is the Act’s inherent contradictions and defects, the second is institutional weakness, and lack of political will in the country to secure a just, fair and effective implementation of the Act to bring about economic. On the first leg, the divesting of citizens’ freehold title to their land is antithetical to their economic prosperity as land ceased from being an article of commerce upon the commencement of the Act. Against the backdrop that overwhelming majority of Nigerians have no other source of income and livelihood save the one derivable from land by way of subsistence farming or disposal to earn income for business or family needs, this dispossession has plunged the majority of Nigerians into poverty rather than prosperity (Nwocha, 2016). Any development strategy must ultimately be interwoven with the aspirations of the people and society rather than seek to pursue the ambitions of few people in government (Isong, 1985). This dispossession

therefore places less income in the hands of the vast majority of Nigerians and, for that matter, impacts adversely on the *per capita* income and the Gross Domestic Product (GDP). This leads to a vicious circle of low savings, low investment and slower economic progress. On the second leg, national institutional frameworks are weak and the requisite political will that could have guaranteed a firm, equitable and just implementation of the Act is lacking. The result is that the cost of land continues to rise astronomically and land speculation has become even more rife than previously. Land has continued to be accumulated in the hands of the few private rich people who have the wherewithal to acquire them. Concurrently, the harsh economic climate in the country with rising cost of living has put Nigerians in dire straits such that some who have access to land whether by inheritance, previous purchase, or by family or communal allotments are more readily predisposed to selling them to meet immediate survival needs. Thus, the rich continue to accumulate more and more lands to the detriment of the dominant poor. The situation has been complicated by the politicization of almost all public affairs and institutions in the country. This has resulted in a situation where sitting Governors revoke the certificates of occupancy of political adversaries or refuse to grant it to those who do not share their political vision. At the same time, in some cases, grants of rights of occupancy have been made to political cronies and associates of the Governors even against the tenets of the Act. It is no wonder then that, after more than three decades of operating the Land Use Act, few of its set objectives could be said to be accomplished and the Act has neither generated the anticipated economic prosperity and equality of access to land for Nigerian nor the desired economic development that it was hoped to usher in (Nwocha, 2016).

4.0. CONCLUSION

From time immemorial land has remained the most valuable property in the life of man and his development. It is a source of wealth to those who acquire it and all the basic needs of human existence are land dependent. The Land Use Act, at the time of its enactment, was hailed as a revolutionary law that would propel Nigeria into the path of economic prosperity. It effectively abrogated absolute ownership or freehold interests on land by the community, the family and the individual and created same in favour of government to hold in trust for the use of all Nigerians. Unfortunately, the optimism that heralded the Act gradually and steadily faded into disillusionment as its lofty aims turned out to be defeated due to inherent defects and contradictions in the Act on the one hand, and institutional failure and lack of political will to implement the Act firmly and equitably on the other. To ameliorate the situation, it is recommended that certain unfair provisions of the Act such as sections 5, 6, 22, 28 and 29 be amended to give the Act a human face and to restore prosperity to the people while securing an equitable access to land in the country

RECOMMENDATIONS

The intentions and objectives of the Land Use Act are no doubt lofty and well-intentioned but the Act turned out to be defective in many respects. Shackled with institutional failure, dearth of political will and inherent defects, the law could not achieve most of its set objectives. Notwithstanding, the desire for

economic development through effective, fair and equitable utilization of land and land resources could be attained if the law is holistically amended to overturn certain anachronistic and antithetical provisions and replaced with realistic and effective policies that would put the Nigeria on the part of economic progress (Nwocha, 2016). The study recommend as follows; enactment of a land policy that incorporates the customary norms of the people. Section 8 of the Act should be amended to make the grant of a statutory or customary right of occupancy permanent. This would guarantee the security and stability of economic interests and improvements on land, the subject matter of a right of occupancy. As the experience in operating the law has shown, when a certificate of occupancy is issued for a short duration of time, it amounts to economic risk to invest on the land, which is the subject matter. Furthermore, section 22 of the Act should be amended to eliminate the requirement of obtaining the consent of the Governor before a holder can alienate his right whether by assignment, mortgage, transfer of possession, sublease or otherwise. This provision makes it cumbersome for landowners to obtain credit facilities from financial institutions needed for projects, businesses and other ventures. Aside of other negative influences, obtaining the Governor's consent can cause prolonged delay in economic transactions. Again, section 28 of the Act should be amended to limit the grounds upon which the Governor can exercise his power to revoke a right of occupancy for overriding public interest. Such grounds specifically should not include alienation by a landowner of his interest in the land. Similarly, section 29 should be amended to make compensation payable not only for unexhausted improvements on the land, but also for loss of the land itself as a store of value together with the improvements. Compensation should also be commensurate with the market value of the land and the improvements therein. Other ancillary provisions of the law should be amended to give effect to the above recommendations. When these amendments have been made, government should muster the requisite political will to implement the law effectively, fairly and equitably.

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